



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 29th April, 2016:—

### I

#### BILL NO. XII OF 2016

##### *A Bill further to amend the Constitution of India*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2016. Short title, and  
commence-  
ment.  
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In Article 15 of the Constitution,—  
(i) in clause (1) for the word "Sex" the words "sex, gender, sexual Orientation" shall be substituted; Amendment of  
article 15.  
(ii) in clause (2) for the word "sex" the words "sex, gender, sexual Orientation" shall be substituted.
3. In Article 16 of the Constitution, in Clause (2), for the word "sex", the words "sex", gender, sexual orientation shall be substituted. Amendment of  
article 16.

## STATEMENT OF OBJECT AND REASONS

As our nation evolves, it is important that our Constitution also evolves to address new challenges and situations, while adhering to its eternal foundational values. Today, we are faced with a situation where article 15 of the Constitution needs to be extended. Article 15 directs the State to prohibit discrimination on the basis of religion, race, caste, sex, and place of birth. Over the years, challenges posed in the courts on these grounds have transformed this formal, legal provision of *non-discrimination* into an effort towards achieving *substantive equality*. Therefore, it is time that our fundamental rights explicitly counter exclusion on the basis of gender and sexual orientation.

Parliament has a primary responsibility in this regard, underscored by the Supreme Court's 2013 judgment in *Suresh Kumar Kaushal v. Naz Foundation*. The Supreme Court struck down Delhi High Court's decision to read down Section 377 and specifically called upon Parliament to lead the way.

Currently, article 15 has a closed list of five specified grounds—religion, race, caste, sex and place of birth. The same grounds are also applicable to article 16 which guarantees equality of opportunity in matters of public employment. Other countries have taken a more lenient view of the grounds on which basis, discrimination is acknowledged and remedied. Constitutions like that of *Canada*, and South Africa have used the terms 'grounds such as...', 'including...', 'in particular...' or '*other status*' to indicate that the list is not exhaustive and leaves space for interpretation, to include unenumerated or analogous grounds. *Article 14 of the European Convention of Human Rights* and *Section 9 of the South African Constitution* contain the most wide ranging list of expressly prohibited grounds and the *Fourteenth Amendment of the United States Constitution* is entirely open-ended, leaving the courts to determine which grounds should be protected.

India too to seeing a convergence with more liberal non-discrimination clauses. The *Indra Sawhney v. Union of India (1992)* judgement indicated that those grounds, "that are not specified in article 15 but are analogous to those specified therein, and which have the potential to impair the personal autonomy of an individual" must upon scrutiny, be able to claim protection under article 15.

However, leaving it to the judicial system alone to respond to issues of inequality on the basis of sexuality and gender may not be adequate. It is high time to challenge inequality on the basis of sexual orientation and gender by explicitly expanding article 15 and article 16 to ensure substantive equality.

Hence, this Bill.

PROF. M.V. RAJEEV GOWDA

## II

### BILL NO. XIX OF 2016

*A Bill further to amend the Code of Criminal Procedure, 1973.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Code of Criminal procedure ( Amendment) Act, 2016.

Short title and  
commence-  
ment.

(2) It shall come into force at once.

2. In section 125 of the Code of Criminal Procedure, 1973,—

Amendment of  
Section 125 of  
Act of 1973.

(i) in sub-section (I), after the words "at such monthly rate", the words "not less than one-third of the monthly income of the person from whom the maintenance is claimed", shall be inserted.

(ii) after sub-section (I) the following sub-section shall be inserted, namely:—

(IA) If the party from whom the maintenance is claimed fails to appear before the court on three successive occasions, the Magistrate on the third occasion shall pass the order *ex-parte*.

## STATEMENT OF OBJECTS AND REASONS

As of now, no amount of maintenance allowance has been prescribed under section 125 of the Code of Criminal Procedure, 1973. The earlier limit of maintenance of rupees five hundred was, removed in the year 2001 as that was fixed many years earlier. Though that was a right move but in the absence of a reasonable minimum amount of monthly allowance, dependents are facing problem. There has to be a minimum limit in this regard to remove ambiguity so that the dependents have a reasonable amount to live with.

It has also been seen that at times the cases for maintenance stretch too long in view of the non appearance of the person from whom maintenance has been claimed, which is inappropriate in the interest of justice to the dependents.

Therefore, it is proposed that the amount of maintenance should not be less than one third of the monthly income of the person and if the person failed to appear before the Magistrate for three consecutive times, *ex-parte* orders should be passed against him.

Hence this Bill.

VIJAY JAWAHARLAL DARDA

### III

#### BILL NO. XX OF 2016

*A Bill to provide for constitution of special courts for Scheduled Castes and Scheduled Tribes in the country and for matters connected therewith.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Special Courts for Scheduled Castes and Scheduled Tribes Act, 2016.

Short title  
extent and  
commencement

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

**2.** In this Act, unless the context otherwise requires:—

(a) 'appropriate Government' means in the case of a State, the State Government and in all other cases the Central Government.

(b) 'offence' means any offence committed against a member of Scheduled Castes and Scheduled Tribes.

(c) 'prescribed' means prescribed by rules made under the Act.

(d) 'Scheduled Castes' means the castes included in the Constitution (Scheduled Castes) Order 1950.

(e) 'special court' means special court constituted under section 3 of this Act.

(f) 'Scheduled Tribes' means the tribes included in the Constitution (Scheduled Tribes) Order 1950.

Establishment of special courts for Scheduled Castes & Scheduled Tribes.

**3. (1)** The appropriate Government shall, by notification in the Official Gazettes, set up adequate number of special courts at district level to deal exclusively with matters arising out of crimes or offences committed against Scheduled Castes and Scheduled Tribes in the country.

(2) Every special court established under sub-section (1) shall be headed by a Chief Judge who shall be qualified to be appointed as District Judge and shall have such number of other Judges as the appropriate Government may prescribe keeping in view the Scheduled Caste and Scheduled Tribes population in the district.

Qualification for appointment as Chief Judge and other Judges of special court.

**4.** The qualification and salary, allowances and other terms and conditions of service of the Chief Judge and other Judges shall be such as may be prescribed.

Senior most Judge to act as a Chief Judge or to discharge his functions in certain circumstances.

**5. (1)** In the event of occurrence of any vacancy in the office of the Chief Judge by reason of his death, resignation or otherwise, the senior most judge of that court shall discharge his functions until a new Chief Judge, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chief Judge is unable to discharge his functions owing to his absence from duty due to any reason, the senior most judge of that special court shall discharge functions of the Chief Judge until the Chief Judge resumes his duties.

Financial and other powers of the Chief Judge

**6.** Every Chief Judge shall exercise such financial and administrative powers as may be vested in him in such manner as may be prescribed.

Staff of the special court

**7.** The appropriate Government shall appoint sufficient number of officers and staff to assist the special court in the discharge of its functions on such terms and conditions of service as may be prescribed.

Jurisdiction power and authority of special courts

**8.** Save as otherwise expressly provided in this Act, every special court shall exercise all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the concerned High Court and the Supreme Court in relation to all matters offences or atrocities committee, against Scheduled castes and Scheduled Tribes under the Indian Penal Code, 1860 or any other law for the time being in force in relation to Scheduled Castes and Scheduled Tribes.

Transfer of pending cases.

**9.** Every case or other proceedings relating to Scheduled Castes and Scheduled Tribes pending before any other court or any authority shall stand transferred to such special court on the commencement of this Act:

Provided that nothing contained in this section shall apply to a case or other proceedings pending in a High Court or the Supreme Court.

**10.** The appropriate Government shall make necessary arrangements for free legal aid to Scheduled Castes and Scheduled Tribes for meeting the cost of litigation in special court.

Free legal aid to Scheduled Castes and Scheduled Tribes.

**11.** Every case in a special court shall be disposed of as early as possible and in any case not later than one year from the date of filing the case in the court.

Disposal of cases by special courts.

**12.** The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

## STATEMENT OF OBJECTS AND REASONS

Scheduled Castes and Scheduled Tribes still continue to be the oppressed classes of our society. They have suffered for centuries. Although with the institution of the democratic form of government in the country, many steps have been taken to improve their status in the society yet this change is limited only in the urban areas. In the rural areas, the position at some places, is still the same as it used to be many years ago. They have never received justice from the persons who were at the helm of affairs of their fate. In a welfare state like ours it is a bounden duty of the state to ensure that the members of the Scheduled Castes and Scheduled Tribes receive speedy justice at their door steps. These classes are unable to fight long litigations in the normal courts. In view of their financial position they also need free legal aid for meeting the cost of litigation. In view of their disadvantageous position in the society, especially at district level in the rural areas, there is an urgent need that a separate and parallel system of justice for Scheduled Castes and Scheduled Tribes should be established. It is, therefore, proposed that special courts at district level may be established for the Scheduled Castes and Scheduled Tribes in the country.

Hence this Bill.

VIJAY JAWAHARLAL DARDA



#### FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that Government and Union territory administration shall set up sufficient number of special courts to deal exclusively with matters arising out of atrocities committed against Scheduled Castes and Scheduled Tribes. Clause 4 provides for payment of salaries and allowances to the Chief Judge and other Judges. Clause 7 provides for appointment of officers and staff required for special courts. Clause 10 provides for free legal aid to Scheduled Castes and Scheduled Tribes. The expenditure in respect of special courts for Union territories shall be met out of the Consolidated Fund of India. It is likely that an amount of rupees one thousand crore will be involved for setting up special courts in Union territories per annum. A non-recurring expenditure of about rupees two hundred crore is also likely to be involved.

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#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Since the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

**IV****BILL NO. XXI OF 2016**

*A Bill to prevent atrocities against women in the country, to provide for Special Courts for the trial of such offences committed against women and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title,  
extent and  
commence-  
ment.

- 1.** (1) This Act may be called the Prevention of Atrocities on Women Act, 2016.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date, as the Central Government may by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of State, the Government of that State and in all other cases the Central Government:

(b) "atrocities" means an offence punishable under section 3:

(c) "Code" means the Code of Criminal Procedure, 1973:

(d) "employer" means,—

(i) in relation to an establishment under the control of the appropriate Government, the head of the Department or Ministry as the case may be;

(ii) in relation to an establishment under any local authority or Local Self Government, the Chief Executive Officer by whatever designation called;

(iii) in relation to other cases, the person or the authority who has the ultimate control over the affairs of the work place.

(e) "Special Court" means a Court of Session specified as a Special Court in section 7;

(f) Words and expressions used but not defined in this Act and defined in Code or the Indian Penal Code shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code.

3. (1) Whoever,—

Punishment  
for Offences of  
atrocities.

(i) makes any lewd remarks, gestures, signs or insinuations against a woman in office or in any public place.

(ii) assaults or uses force against any woman with intent to dishonour or outrage her modesty;

(iii) forcibly removes cloths from the person of a woman or parades her naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) compels or entices a woman to do 'begar' or other similar forms of forced or bonded labour;

(v) being in a position to dominate the will of a woman and uses that position to harass or exploit her sexually to which she would not have otherwise agreed;

(vi) intentionally insults or intimidates with intent to humiliate a woman in any place within public view;

(vii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a woman;

(viii) takes pictures or video of a woman without her consent or knowledge by violating her privacy;

(ix) forces or compels any woman into prostitution;

(x) declares any woman witch or *daiyan* or by any other name called,

shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which may extend to twenty-five thousand rupees.

(2) Whoever, being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to the maximum punishment provided for that offence.

2 of 1974.

45 of 1860.

Punishment  
for neglect of  
duties.

**4.** Whoever, being a public servant, willfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

Special Court.

**5.** For the purposes of providing speedy trial, the appropriate Government shall, with the concurrence of the Chief Justice of High Court, by notification in the Official Gazette, specify for each district a Court of Sessions to be a Special Court to try offences under this Act.

Procedure to  
be followed by  
Special Court.

**6.** (1) Where the Special Court is satisfied, upon a complaint or a police report that a persons is likely to commit an offence under this Act, it may, by order in writing, direct such person to remove himself beyond the limits of such area, within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding one year, as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

Punishment  
for contraven-  
tion of order of  
Special Court.

**7.** Any person contravening an order of the Special Court made under section 6 shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend upto ten thousand rupees.

Declaration of  
area prone to  
atrocities.

**8.** A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take preventive action in such manner as may be prescribed.

Appropriate  
Government to  
frame scheme.

**9.** (1) The appropriate Government shall provide such relief and rehabilitation to the victims of the atrocities under this Act by framing schemes as may be notified from time to time.

(2) Without prejudice to the generality of the aforesaid provision the appropriate Government shall provide free board and lodging and medical facilities to the severely affected victims of atrocities under this Act.

Central  
Government to  
provide funds.

**10.** The Central Government shall, after due appropriation made in this behalf, provide such requisite funds for being utilised for the purposes of this Act.

Power to  
remove  
difficulty.

**11.** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of three years from the date of commencement of this Act.

Protection of  
action taken in  
good faith.

**12.** No suit, prosecution or other legal proceeding shall lie against the Central Government or against the State Government or any officer or authority of Government or any other persons for anything which is in good faith done or intended to be done under this Act.

**13.** Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any other law.

Act to have over-riding effect.

**14.** The Central Government may, by notification in this Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

## STATEMENT OF OBJECTS AND REASONS

Women are the most vulnerable lot of our society. Every now and then, women are subjected to atrocities and violence in one form or the other. They are subjected to all kinds of torture which more often than not go unreported. At times, the administration does not respond with the kind of agility that is required on the incidents of atrocities on women. There is no dearth of incidents when women are paraded naked in many places in our country and, at time, also declared as witches or *daiyans*. This is the worst kind of treatment given to women without any fault. They are left at the mercy of their fate and no one comes to their rescue. Further, sexual harassment of women in work place is also very common and frequent. The Supreme Court of India has taken this issue very seriously. In the case of *Vishaka and Others Vs. State of Rajasthan and others* [1997 (7) Sec. 323] the Supreme Court has laid down norms and guidelines to be followed by employers or other responsible persons in the work places or other institutions to prevent or deter the commission of acts of sexual harassment and also to provide the procedures for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required including setting up of Complaints Committees for redressal of the complaint made by the victim pending the enactment of suitable legislative. The National Commission for Women had also taken up this issue very seriously. It was, however been found that the Complaint Committees were not formed in a number of cases. Women are continued to be mentally and sexually exploited and pushed into flesh trade. In, 2013, the Government enacted a legislation namely the sexual harassment of women at work place (Prevention, Prohibitions and Redressal) Act, 2013 in order to provide protection against sexual harassment of woman at work place and for the prevention and redressal of complaint of sexual harassment etc. There is however, a need for strict punishment which will serve as deterrent for others and also special courts for expeditious trial of those accused of offences committed against womens.

Hence this Bill.

VIJAY JAWAHARLAL DARDA

#### FINANCIAL MEMORANDUM

Clause 9 of the Bill provides that the appropriate Government shall provide relief and rehabilitation to the women and children who are victims of atrocities. Further, Clause 10 of the Bill provides that the Central Government shall provide requisite funds for the purposes of this Bill. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of rupees twenty crore will be required for the purpose. Non-recurring expenditure to the tune of rupees one crore will also be required.

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#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill gives power of the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to the matters of details only. The delegation of legislative power is of normal character.

## V

## BILL NO. XXIV OF 2016

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title and  
Commencement.

1. (1) This Act may be called the Constitution (Amendment) Act, 2016.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of  
new article  
21A.

2. After article 21A of the Constitution, the following new article shall be inserted, namely:—

“21B. (1) Notwithstanding anything contained in Part IX and Part IXA, every citizen of India, shall have the right to be chosen as and for being a member of Parliament, State Legislatures, Panchayats, and Municipalities, in accordance with the provisions of this Constitution.

(2) The State may provide for any disqualifications for being chosen as and for being a member of Parliament, State Legislatures, Panchayats, and Municipalities, on grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice.

(3) Notwithstanding anything in the Constitution, or any judgement or order of any court, any law inconsistent with clauses (1) and (2) shall, to the extent of such inconsistency, be void.”



## STATEMENT OF OBJECTS AND REASONS

The Preamble to the Constitution of India declares India as a Sovereign Socialist Secular Democratic Republic and guarantees its citizens Political, Social and Economic Justice and Equality of status and of opportunity.

The Supreme Court of India, while interpreting the Constitution of India, has repeatedly held that Democracy is part of the basic structure of the Constitution. The right to vote and the right to contest for an election are integral to representative democracy and hence part of the basic structure of the Constitution.

India is a signatory to and has ratified the International Covenant of Civil and Political Rights, 1966 that mandates State Parties to guarantee to their citizens the right to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

However, in express opposition to the democratic scheme of the Constitution and international obligations of India, executive decisions of some Governments have imposed qualifications on the citizen's right to contest, which debar more than fifty per cent of the electorate from exercising their right to contest for electoral office. This has been made possible due to a lacuna in the Constitution which does not explicitly guarantee the citizen's right to contest for electoral office.

While this power has so far only been exercised for elections to local self-governments, the current Constitutional scheme as interpreted by some political parties and the Courts does not bar similar exclusions to elections to the State Legislature or Parliament thereby undermining the very foundation of our democracy.

It is thus important to clarify and secure the fundamental status of the citizen's right to contest for all public offices and it is thought fit to elevate the right to be chosen as a member to the House of the People, State Legislature, Panchayats and Municipalities as a fundamental right.

Hence this Bill.

GHULAM NABI AZAD

## VI

### BILL NO. XVIII OF 2016

*A Bill to make provisions in relation to bail in connection with criminal proceedings in the country and to ensure protection of personal liberty of the citizens and matter connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

Short title, extent  
and  
commencement.

1. (1) This Act may be called the Bail Act, 2016.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

2. (1) In this Act, unless the context otherwise requires, "bail" means—

Definitions.

(i) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or

(ii) bail grantable in connection with an offence to a person who is under arrest for the offence or who has reason to believe that he may be arrested on accusation of having committed any offence.

(2) Words and expressions used and not defined in this Act but defined in the Code of Criminal Procedure, 1973 or the Indian Penal Code, 1860 or the Indian Evidence Act, 1872 shall have the same meanings respectively assigned to them in those codes and the Act.

2 of 1974.  
45 of 1860.  
1 of 1872.

3. Where an enactment (whenever passed) which relates to bail refers to the person bailed, appearing before a Court, it shall be construed unless the context otherwise requires as referring to his surrendering himself to the custody of the Court under this Act.

Surrender  
before the  
court.

4. Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

Reference to  
other laws.

## CHAPTER II

### INCIDENTS OF BAIL

5. A person accused of committing bailable offences or non-bailable offences when granted bail shall be under a duty to surrender to custody, and that duty is enforceable in accordance with the provisions of this Act.

Duty to  
surrender to  
custody.

6. A person, when granted bail, may be required to furnish surety before release on bail, is cases—

Furnishing of  
surety by a  
person granted  
bail.

(a) where he is accused of committing bailable offences except if he is declared indigent by the Court.

*Explanation.*— If a person is unable to furnish bail bond within a week of the date of his arrest, it shall be sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this section.

(b) where accused of committing non-bailable offences.

7. A person who is accused of committing non-bailable offence may be required by court to comply, after release on bail, with following conditions—

Compliance  
with conditions  
by a person  
granted bail.

(i) that such person surrenders to the custody;

(ii) that such person shall not commit an offence similar to the offence of which he is accused, or suspected of the commission;

(iii) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so facts to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;

(iv) that such person makes himself available for the purpose of enabling inquiries or a report to be made and also to assist to deal with him for the offence;

(v) such other conditions as it consider necessary in the interest of justice.

*Explanation.*—Application of these conditions shall be limited in cases where a person is accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence.

45 of 1860.

Releasing of an accused on bail by Court.

8. If it appears to an officer of Court at any stage of investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further enquiry into his guilt, subject to the discretion of such officer or Court, the accused shall be released on bail and the condition imposed by the Court shall be relaxed upon, such officer of Court recording the reasons for release on bail or relaxation of conditions in writing .

Release of an accused by the Court on personal bond, etc.

9. Where a person has, during the period of investigation, inquiry or trial under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law), undergone detention for a period extending upto one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for the reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for that said offence under that law.

*Explanation.*—In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

### CHAPTER III

#### BAIL FOR ACCUSED PERSONS AND OTHERS

Granting of bail in case of bailable offences.

10. When the person is arrested or detained for a bailable offence without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in custody of such officer or at any stage of the proceeding before such Court to furnish bail bond, such person shall be released on bail:

Provided where a person has failed to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody.

Granting of bail in case non-bailable offences.

11. When the person is arrested or detained for a bailable offence without warrant by an officer in charge of a police-station or appears or is brought before a Court other than a High Court or Court of Session, he may be released on bail except—

(i) If there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) If the offence committed by the accused is cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that persons referred to in clauses (i) and (ii) of section 11 shall be released on bail by the Court if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that Court may also direct that a person referred to in clause (ii) of section 11 be released on bail if it is satisfied that it is just and proper to do so for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

**12.** No person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under section 11 without giving an opportunity of hearing to the Public Prosecutor.

No bail in case of an offence punishable with death etc.

**13.** An officer or a Court releasing any person on bail under section 11, shall record in writing his or its reasons or special reasons for so doing.

Reasons to be recorded before bail.

**14.** Any Court which has released a person on bail under section 11, if it considers necessary so to do, may direct that such person be arrested and commit him to custody.

Committing a person to custody.

**15.** If in any case triable by a magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during whole of the said period, be released on bail to the satisfaction of the magistrate, unless for reasons to be recorded in writing, the magistrate otherwise directs.

Trial in case of non-bailable offences.

**16.** If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

Conclusion of trial.

**17.** Before conclusion of trial and before disposal of appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgement of the respective Courts and such bail bonds shall be in force for six months.

Execution of bail bonds with sureties.

*Exception*—This section shall not apply once a person has been acquitted by the trial Court.

*Explanation*.—Once the person has been acquitted by the Court trying the offence he shall released henceforth without any bail or sureties even if any appeal to the higher Court is pending.

**18. (1)** When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail, and that Court may, after taking into consideration, *inter-alia*, the following factors, namely—

Anticipatory bail for non-bailable offence.

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of bail.

**(2)** Where the Court grants an interim order under sub-section (1) of section 18, it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

*Explanation*.—The final order made on an application for direction under sub-section (1) of section 18, shall not be construed as an interlocutory order for the purposes of this Act.

(3) When the High Court or the Court of Session makes a direction under sub-section (1) of section 18, it shall include following conditions:—

(i) that the person shall make himself available for interrogation by a police officer as and when required;

(ii) that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed by Section 10, as if the bail were granted for bailable offences.

(4) if such person is thereafter arrested without warrant by an officer-in-charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to furnish bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should be issued, in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1) of section 18.

(5) If an application under this section has been made by any person either to the High Court or the Court of Session, no further application by the same person shall be entertained by either of them.

Direction for  
release of a  
person on bail.

**19.** A High Court or Court of Session may direct—

(a) that any person accused of an offence and in custody be released on bail, and if the Offence is of the nature specified in section 10, may impose any condition which it considers necessary for the purposes mentioned in Section 10.

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in the writing, of the opinion that it is not practicable to give such notice.

Detention of a  
person in  
custody.

**20.** (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence and;

(iii) on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Section 10 and 11 of this Act;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

*Explanation I.*—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;

*Explanation II.*—If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(4) A Magistrate authorising detention in the custody of the police under this section shall record his reasons for so doing.

(5) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

#### CHAPTER IV

##### CANCELLATION OF BAIL AND FOREFIETURE OF BONDS

**21. (1)** When a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty as prescribed under this Act:

Provided the bail shall not be refused nor penalty shall be imposed on the accused if the accused is able to prove before the Court that he had reasonable cause not to comply with the conditions of bail:

Provided further that the bail shall not be refused to the person accused if he has taken leave of the Court not to comply with the conditions imposed by the Court.

(2) A High Court or Court of Session may direct that any person who has been released on bail under section 10 be arrested and commit him to custody:

Cancellation of Bail in cases of bailable offences.



Provided that High Court or the Court of Session shall give adequate notice of hearing of the application of cancellation of bail to the accused.

Release of a person of unsound mind on bail.

**22.** (1) Whenever a person is found to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987.

14 of 1987.

(3) Whenever a person is found to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keep in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that—

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person.

(b) If the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training.

Cancellation of Bail in cases of non-bailable offences.

**23.** The Court other than the High Court or Court of Session may exercise its power to cancel the bail granted by it under section 11 and to recommit the accused to jail under any one or more of the following circumstances, namely:—

(i) while on bail the accused commits the same offence for which he is being tried or has been convicted;

(ii) if he hampers investigation of the case;

(iii) if he tampers with the evidence and threatens the witness;

(iv) if he runs away to a foreign country or goes underground or beyond the control of his sureties;

(v) if he commits acts of violence, in revenge, against the police and the prosecution witnesses:

Provided that Court shall assign reasons before cancellation of bail.

Forfeiture of bond.

**24.** (1) Where a bond under this Act is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Act, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been



transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited.

The Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

*Explanation.*— A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and or the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Act:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only;

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond;

(5) Where any person who has furnished security and is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

**25.** Without prejudice to the provisions of section 24, where a bond under this Act is for appearance of a person in a case and it is forfeited for breach of a condition—

Cancellation of bond and bail bond.

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond provided that if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provision of this Act he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.

**26.** When any surety to a bond under this Act becomes insolvent or dies, or when any bond is forfeited under the provisions of section 24, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

Insolvency of Death of a Surety.

**27.** When the person required by any court, or officer to execute a bond is a minor, such court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

Execution of a bond by minor.

**28.** All orders passed under section 24 shall be appealable,—

Orders to be appealable.

(i) in the case of an order made by a Magistrate, to the Session Judge;

(ii) in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

Direction to  
Magistrate to levy  
amount.

**29.** The High Court or Court of Session may direct any magistrate to levy the amount due on a bond for appearance or attendance at such High Court or Court of Session.

## CHAPTER V

### MISCELLANEOUS

Bonds and  
sureties.

**30.** (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the high Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the surety is fit or sufficient, the Court may accept affidavits as proof of the facts contained therein relating to the financial condition, character, previous conviction if any and his proximity, whether in point of kinship, place of residence or otherwise to the person for whom he is to be surety, or, if it considers necessary, may either, hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency.

(5) Every person standing surety to an accused persons for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all relevant particulars.

(6) The amount of every bond executed under this Act shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(7) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

(8) If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

(9) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(10) On such application being made, the magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(11) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

Release of a  
person on bail.

**31.** (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order, shall release him.

(2) Nothing in this section, section 10 or section 11 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

2 of 1974.

**32.** (1) Chapter XXXIII of the Code of Criminal Procedure, 1973 is hereby repealed (hereinafter referred to as repealed provisions).

Repeal and savings.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken, including any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed provisions shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act; and

(b) any principal or rule of law or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from, the repealed provisions.

10 of 1897.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act 1897 with regard to the effect of repeal.

**33.** The Central Government may, by notifications in the official Gazette, make rules for carrying out the purposes of this Act.

Rule making.

## STATEMENT OF OBJECTS AND REASONS

India is a welfare State. It is necessary to make provision in relation to bail in connection with criminal proceedings in India to ensure that freedom and personal liberty of any citizen is not affected except in accordance with procedures established by law.

Bail relates to citizens' right to life and liberty, it is expedient to enact a separate legislation to address all issues related to bail and therefore a separate legislation is required.

It is necessary for the person's life and liberty be protected and respected by the state by all means and through all stages of a judicial process involving the due process of law;

It is imperative that the law operates in a manner that the best interest and well-being of the citizens of the country are protected.

The recommendations made by Law Commissions on bail related provisions are required to be incorporated within the statutory framework.

Hence this Bill.

SUKHENDU SEKHAR ROY

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#### FINANCIAL MEMORANDUM

The Bill provides certain procedures to be followed within a legal framework so as to deal with all matters connected with or incidental to bail which may or may not be granted to an accused person and as such no further expenditure from the Consolidated Fund of India shall be incurred afresh other than the manner in which the expenses are hitherto being incurred.

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#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 33 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

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SHUMSHER K. SHERIFF,  
*Secretary-General.*